

IP 90-0123-CR 1 B/F US v Gammon
Magistrate Kennard P. Foster

Signed on 10/6/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 90-123-CR-01 B/F)
)	
CHARLES EDWARD GAMMON,)	
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on July 19, 2005, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on July 15, 2005, and to submit to Judge Barker on proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). Proceedings were held in this matter on August 2, 2005 and October 4, 2005, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.

On August 2, 2005, the defendant appeared in person and by his appointed counsel, Jim McKinley, Office of the Indiana Federal Community Defender. Appearing for the government was Sharon Jackson, Assistant United States Attorney, and U. S. Parole and Probation appeared by Dwight Wharton, U. S. Probation officer, who also participated.

On August 2, 2005, the following proceedings occurred in accordance with Rule 32.1(a)(1) of the *Federal Rules of Criminal Procedure*:

1. Jim McKinley, Office of Indiana Federal Community Defender, appointed counsel, was present to represent Mr. Gammon in regard to the Petition for Revocation of Supervised Release.

2. A copy of the Petition for revocation of supervised release, filed July 15, 2005, was provided to Mr. Gammon and his counsel who informed the Court that they had read and understood the specification for the violation charged therein and waived further reading thereof.

2. Mr. Gammon was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violation of his supervised release contained in the pending Petition to revoke supervised release.

3. That Mr. Gammon would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

4. That Mr. Gammon had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

5. That if the preliminary hearing resulted in a finding of probable cause that Mr. Gammon had violated the alleged condition or conditions of his supervised release set forth in the Petition, he would be held to answer in a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on July 19, 2005.

6. Mr. McKinley stated that Mr. Gammon would stipulate that there is a basis in fact to hold him on the specification of violation of supervised release set forth in the Petition to revoke his supervised release, filed on July 15, 2005. Mr. Gammon then signed a written waiver of preliminary examination.

7. After Mr. Gammon waived preliminary examination in writing, the Court accepted his written waiver and held him to answer for a revocation hearing.

8. Mr. Gammon, by counsel, stipulated that he admitted the specified violations of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on July 15, 1005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.</p> <p>As stated in the Report on Offender dated May 13, 2005, Mr. Gammon tested positive for marijuana use on 5/3/05 and 5/10/05. He readily admitted his drug usage and stated he last used marijuana on 4/30/05. It is noted heavy marijuana usage may be detected in urine for up to 30 days. Mr. Gammon was placed in weekly substance abuse counseling and testing. In addition, he was warned continued drug use or any other violation would lead to more punitive sanctions.</p> <p>Since the date of the aforementioned violation report, the defendant failed to report on the following random urine collection dates: 5/30/05; 6/17/05; 6/23/05; and 6/29/05. He also submitted urine specimens that tested positive for marijuana on the following dates: 5/18/05; 5/27/05; 6/10/05; 7/6/05. During an office visit on July 6, 2005, Mr. Gammon admitted ongoing marijuana usage.</p>

The Court, after finding that the defendant had violated the conditions of his supervised release, took disposition under advisement and set the date of October 4, 2005 for the disposition hearing.

On October 4, 2005, the defendant appeared in person and with his appointed counsel, Jim McKinley, and the government appeared by Gayle Helart, Assistant United States Attorney in the stead of Sharon Jackson; and U. S. Parole and Probation officer Dwight Wharton appeared and participated.

The Court first reviewed the prior proceedings in the Court and the current status of the case, that is, that the Court had conducted the previous proceedings as set forth above and that the Court

had additionally heard evidence from both the government and defendant regarding disposition and then allowed both the government and the defendant, along with his counsel, to make any statements they desired. The Court further inquired of Dwight Wharton as to the conduct of the defendant since the August 2, 2005 proceedings.

The parties stipulated the following in open Court:

(1) Mr. Gammon and the government agreed they were ready to proceed to disposition on the pending Petition to revoke Mr. Gammon's supervised release in open Court on October 4, 2005.

(2) Mr. Gammon admitted that he committed the violation of specification set forth in the Petition to Revoke Supervised Release, filed with the Court on July 15, 2005.

The Court having previously heard the evidence, the stipulations of the parties, the defendant's explanations, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Charles Edward Gammon, violated the above-delineated condition of his supervised release. The defendant's supervised release is therefore **CONTINUED** and Charles Edward Gammon is **RELEASED** to continue upon his supervised release under the conditions which were previously imposed at the time of his release from federal incarceration, together with additional conditions, if any, required by the Court and entered as an order since his release from incarceration.

Counsel for the parties and Mr. Gammon stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

Counsel for the parties and Mr. Gammon entered the above stipulations after being notified by the undersigned U. S. Magistrate Judge that the District Court may refuse to accept the stipulation and waivers and conduct a revocation hearing pursuant to 18 U.S.C. §3583 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure*, and/or may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation continuing Mr. Gammon on the previously-entered conditions of supervised release, together with any additional conditions of supervised release ordered by the Court while he has been under supervision by U.S. Parole and Probation Officers.

IT IS SO RECOMMENDED this 6th day of October, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court

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U. S. Parole and Probation

U. S. Marshal Service